

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICANT

: Jackowski et al.

INVENTION:

: BIOPOLYMER MARKER INDICATIVE OF
DISEASE STATE HAVING A MOLECULAR
WEIGHT OF 1211 DALTONS

SERIAL NUMBER

: 09/845,731

FILING DATE

: April 30, 2001

EXAMINER:

: Smith, Carolyn L.

GROUP ART UNIT

: 1631

ATTORNEY DOCKET NO.

: 2132.029



H191D
Plunkett

6/11/03

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RESPONSE TO OFFICE ACTION OF NOVEMBER 25, 2002

CERTIFICATE UNDER 37 CFR 1.8(a)
I hereby certify that this correspondence is being
deposited with the U.S. Postal Service as First Class mail
in an envelope addressed to Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450 on 5-27-03

Suzanne L. Jones

To: Mail Stop: Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Requirement for Restriction dated
November 25, 2002, having a shortened statutory period for
response set to expire December 25, 2002, and for which a Request
for Extension of Time along with the appropriate fee is filed
concurrently herewith, kindly enter the following response:

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Restriction/Election

Restriction to one of the following inventions has been required under 35 USC 121:

- I. Claims 1-2, drawn to a biopolymer marker, classified in class 530, subclass 300.
- II. Claims 3-9, drawn to a method of evidencing or categorizing at least one disease state, classified in class 436, subclass 173.
- III. Claims 10-34, drawn to a diagnostic assay kit and process of identifying therapeutic avenues, classified in class 422, subclass 61; class 435, subclass 7.1; and class 530, subclass 387.1. If this Group is elected then the TWO below summarized specie elections requirement are also required.
- IV. Group 35, drawn to a process for regulating a disease state by controlling presence or absence of a biopolymer, classified in class 514, subclass 2.

Restriction to one of the following species has been required under 35 USC 121:

FIRST species election requirement for Group III:

Species A: a biochemical material which is a monoclonal antibody

Species B: a biochemical material which is a polyclonal antibody

Species C: a biochemical material which is a non-antibody

SECOND *additional* specie election requirement for Group III:

Species D: diagnosis

Species E: determination of risk assessment

Species F: identification of therapeutic avenues

Applicants here elect with traverse Group I (as drawn to claims 1 and 2) for prosecution on the merits.

It is noted that the Examiner has also required two elections of species under 35 U.S.C. 121 for Group III, however since Applicants elect Group I(as drawn to claims 1 and 2), the elections of species are considered to be non-applicable.

If the biopolymer marker peptide consisting of amino acid residues 2-11 of SEQ ID NO:1 is found to be novel, methods and kits limited to its use should also be found to be novel.

This application is related in claim format to several pending applications of which serial number 09/846,352 is exemplary. The biopolymer marker of serial number 09/846,352 was found to be novel and subsequently claims reading on methods and kits limited to its use were rejoined with the claims reading on the biopolymer marker under *Ochai*. In an effort to maintain equivalent scope in all of these applications, Applicants respectfully request that the Examiner reconsider the restriction requirement in the instant application to include the new claims (36-43) added herein by amendment.